

**SOAH DOCKET NO. 583-13-4773**  
**TCEQ DOCKET NO. 2011-1907-MWD-E**

**EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**  
Petitioner,

V.

**CITY OF BRIDGE CITY**  
Respondent.

§ BEFORE THE  
§  
§  
§  
§ STATE OFFICE OF  
§  
§  
§  
§  
§ ADMINISTRATIVE HEARINGS

CHIEF CLERK'S OFFICE

2014 FEB 12 AM 9:48

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

**RESPONDENT'S RESPONSE TO THE EXECUTIVE DIRECTOR'S  
EXCEPTIONS TO THE PROPOSAL FOR DECISION AND PROPOSED ORDER**

TO THE COMMISSIONERS AND THE HONORABLE ADMINISTRATIVE LAW JUDGE  
KERRIE QUALTROUGH (ALJ):

The Respondent, City of Bridge City herein referred to as "City", respectfully disagrees with the Executive Directors exception to the proposed decision and Order.

In this case the ED excepts the ALJ's determination that the SCBA Violation was not proven and further excepts the reduction in the penalty in the amount attributable in the SCVA violation.

The ED is correct that the City and the ED stipulated that the City did not have a SCBA device located in the open air sewage facility the City did not stipulate that a SCBA device was ever required in an open air facility. There was evidence that a SCBA device was available in the service vehicle that was utilized to access the open air sewage facility. The ED had never previously requested the City mount a SCBA device on the open air sewage facility even though the ED had inspected this same facility since its creation. It was also in evidence that agents of the ED stated on prior inspections that a SCBA device was not required in an open air facility. Nonetheless, the City purchased and installed a separate SCBA device on the open air sewage facility at the request of the ED.

The City respectfully request that the ALJ denied the ED's recommendation to determine that a SCBA violation occurred and that any additional fine be imposed.

I. The City's stipulation was not an admission that a SCBA device was required to be installed in an open air facility.	3
II. The ALJ's fine calculation was correct.	3
III. Conclusion	3

- I. The City's stipulation was not an admission that a SCBA device was required to be installed in an open air facility.

The ED states in his exceptions that the City stipulated to the SCBA Violation and that the ED did establish the SCBA Violation. However as in the hearing the ED has failed to point an any particular statute or regulation that required the City have a SCBA device **attached to the open air sewage facility**. The Ed cites minimum operational standards and training material from the Texas A&M Engineering Extension Service indicating the importance of a SCBA device. However, the ED cited the City for failing to have a SCBA device **attached** to the open air facility. It is undisputed that the City did have a SCBA device available to the employees within the service vehicle that was utilized to access the open air sewage facility. Most importantly the ED fails to cite any authority that requires a SCBA device to be **attached to an open air facility**. The City does not dispute that the SCBA was not attached. The City also does not contest that a SCBA device would be required in a closed facility. However, the City does contest and the ED has failed to show that a SCBA device must be attached to an open air facility. Notwithstanding the ED's failure, the City has complied with their request. The ED is quick to point out the City's shortcomings since 2002, however the ED similarly could have informed the City of its perception of an attached SCBA from inspections that long predated 2002. The City would understand a fine for failing to provide a SCBA, however a SCBA was available to the City's employees. The ED position is simply one of overreaching. The ED desires to fine the City for a violation that does not exist.

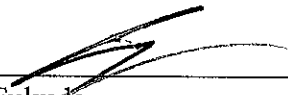
- II. The ALJ's fine calculation was correct.

The Honorable Administrative Law Judge Kerrie Qualtrough correctly calculated the fine for the City's violations.

- III. Conclusion

For the above reasons the City respectfully request the ALJ to deny the ED's exceptions.

Respectfully submitted,  
Paul M. Fukuda  
Attorney at Law  
312 Border Street  
Orange, Texas 77630  
Phone (409) 883-4357  
Fax (409) 883-6263

By:   
Paul M. Fukuda  
State Bar No. 00789915  
Attorney for Respondent

**Certificate of Service**

I certify that on February 7, 2014 the forgoing original document and seven (7) copies were filed with the Chief Clerk, Texas Commission of Environmental Quality, Austin, Texas.

I further certify that on this day the foregoing document was served as indicated:

The Honorable Administrative Law Judge Kerrie Qualtrough  
State Office of Administrative Hearings  
300 W. 15<sup>th</sup> Street, Suite 504  
Austin, Texas 78701  
Via Fax: (512) 512-322-2061

Garrett Arthur  
Office of Public Interest Counsel, MC 103  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711

Jennifer Cook  
Texas Commission on Environmental Quality  
Via Fax: (512) 239-0626

  
Paul M. Fukuda  
Attorney for Respondent